

No. 87-1796

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

OCTOBER TERM, 1987

RUTH MASSINGA, *et al.*,

Petitioners,

v.

L.J., *et al.*,

Respondents.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the Fourth Circuit

BRIEF OF THE STATES OF ALABAMA, DELAWARE,
IDAHO, LOUISIANA, NORTH CAROLINA,
SOUTH CAROLINA, SOUTH DAKOTA, VIRGINIA,
WEST VIRGINIA AND WISCONSIN
AS *AMICI CURIAE* IN SUPPORT OF
PETITION FOR A WRIT OF CERTIORARI

WILLIAM J. GUSTE, JR.*
Attorney General of
Louisiana—
234 Loyola Avenue
New Orleans, Louisiana 70112
(504) 568-5575

*Counsel of Record for
Amici Curiae

DON SIEGELMAN
Attorney General of Alabama
State House
11 South Union Street
Montgomery, Alabama 36130
(205) 261-7300

CHARLES M. OBERLY, III
Attorney General of Delaware
State Office Building
Seventh Floor
820 North French Street
Wilmington, Delaware 19801
(302) 571-3838

[Additional Counsel Listed on Inside Front Cover]

JIM JONES
Attorney General of Idaho
State House
Boise, Idaho 83720
(208) 334-2400

LACY H. THORNBERG
Attorney General of
North Carolina
Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
(919) 733-3305

T. TRAVIS MEDLOCK
Attorney General of
South Carolina
P.O. Box 11549
Columbia, South Carolina
29211
(803) 734-3970

ROGER TELLINGHUISEN
Attorney General of
South Dakota
State Capitol
Pierre, South Dakota 57501
(605) 773-3215

MARY SUE TERRY
Attorney General of Virginia
101 North Eighth Street
Richmond, Virginia 23219
(804) 786-2071

CHARLES G. BROWN
Attorney General of
West Virginia
State Capitol
P.O. Box 7857
Charleston, West Virginia
25305
(304) 348-2021

DONALD J. HANAWAY
Attorney General of Wisconsin
114 East State Capitol
P.O. Box 7857
Madison, Wisconsin 53707
(608) 266-1220

QUESTION PRESENTED

Are social workers subject to actions for damages under 42 U.S.C. §1983 and deprived of the defense of qualified immunity for alleged violations of the foster care funding provisions of the Social Security Act?

TABLE OF CONTENTS

	<u>Page</u>
QUESTION PRESENTED.	i
INTEREST OF AMICI	1
STATEMENT OF THE CASE	3
REASONS FOR GRANTING REVIEW	4
I. The Federal Foster Care Statute Creates No Cause of Action for Damages under the Civil Rights Act.	4
II. The Eleventh Amendment Bars Plaintiffs' Damage Claims Because the State is the Real Party in Interest.	9
CONCLUSION.	12

TABLE OF AUTHORITIES

Cases

<u>Anderson v. Creighton</u> , ___ U.S. ___, 107 S.Ct. 3034 (1987)	8
<u>DeShaney v. Winnebago County Dept. of Social Services</u> , 812 F.2d 298 (7th Cir. 1987), <u>cert. granted</u> , No. 87-154.	9
<u>Edelman v. Jordan</u> , 415 U.S. 651 (1974). .	10
<u>Guardians Assn. v. Civil Service Commission of the City of New York</u> , 463 U.S. 582 (1983)	5
<u>King v. Smith</u> , 392 U.S. 309 (1968). . . .	7
<u>L.J. v. Massinga</u> , 838 F.2d 118 (4th Cir. 1988).	2,7
<u>Maine v. Thiboutot</u> , 448 U.S. 1 (1980) . .	4
<u>Middlesex County Sewerage Authority v. National Sea Clammers Assn.</u> , 453 U.S. 1 (1981)	4
<u>Miller v. Youakim</u> , 440 U.S. 125 (1979). .	7
<u>Pennhurst State School and Hospital v. Halderman (I)</u> , 451 U.S. 1 (1981). . .4,5,7	
<u>Pennhurst State School and Hospital v. Halderman (II)</u> , 465 U.S. 89 (1984). .	9,10
<u>Rosado v. Wyman</u> , 397 U.S. 397 (1979). . .	7
<u>Scheuer v. Rhodes</u> , 416 U.S. 232 (1974). .	10

TABLE OF AUTHORITIES

Cases

<u>Wright v. Roanoke Redevelopment and</u> <u>Housing Authority, U.S. _____,</u> <u>107 S. Ct. 766 (1987)</u>	6
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INTEREST OF AMICI CURIAE

Amici are states that receive federal grants available under the Social Security Act to operate foster care programs. 1/ Thousands of their

1/ Because this brief is filed on behalf of States by their respective attorneys general, consent to its filing is not required. See Sup. Ct. R. 36.4.

employees, including caseworkers, supervisors and administrators, make difficult and delicate decisions to carry out these programs. Amici have an acute interest in the Fourth Circuit's decision to deprive foster care workers of qualified immunity and subject them to damage suits under §1983 for alleged breaches of funding statutes.

This Court has never held that State officials must stand trial for damages for actions performed under a statute enacted by Congress under the Spending Clause. Until the decision in L.J. v. Massinga, 838 F.2d 118 (4th Cir. 1988), no circuit court had held that damages are available under §1983 against state officials who violate the foster care statutes. Amici share a grave concern that this unprecedented decision will subject their employees to numerous damage suits by children in foster care for decisions made decades ago. Because the Fourth Circuit decision has a truly staggering impact on all state officials who administer federal grant programs, amici

respectfully request this Court to grant the petition and review the decision in this case.

STATEMENT OF THE CASE

Plaintiffs filed individual damage actions, along with claims for class declaratory and injunctive relief, against twenty individual state administrators, supervisors and caseworkers of the foster care program administered by a local unit of Maryland's Department of Human Resources. Defendants filed, in response to the money damages claims, a motion for partial summary judgment based on the qualified immunity doctrine. The district court denied the motion and the court of appeals affirmed. Without deciding whether defendants had a constitutional duty to protect children in foster care, the Fourth Circuit held that defendants had a clear and certain statutory duty and therefore they were not entitled to the qualified immunity defense.

REASONS FOR GRANTING REVIEW

I. The Federal Foster Care Statute Creates No Cause of Action for Damages under the Civil Rights Act.

The court of appeals wrongly assumed that rights based on a federal grant statute are enforceable through §1983 damage actions. Settled doctrine of this court, and its special treatment of Spending Clause cases, strongly suggest that plaintiffs assert no rights enforceable under §1983.

Although this Court held in Maine v. Thiboutot, 448 U.S. 1 (1980) that §1983 is enforceable to enforce violations of federal statutes by state officials, Pennhurst State School and Hospital v. Halderman (I), 451 U.S. 1 (1981) and Middlesex County Sewerage Authority v. National Sea Clammers Assn., 453 U.S. 1, 19 (1981) recognized two exceptions to the remedial use of §1983: where Congress has foreclosed enforcement of the statute and where the statute did not

create enforceable rights within the meaning of §1983. Pennhurst (I) further required an explicit expression of intent by Congress to create enforceable rights when enacting grant-in-aid programs under its spending power. "[I]f Congress intends to impose a condition on the grant of federal moneys, it must do so unambiguously." 451 U.S. at 17.

For this reason, damages are unavailable when a plaintiff alleges only a deprivation of rights secured by a Spending Clause statute. See Guardians Assn. v. Civil Service Commission of the City of New York, 463 U.S. 582, 602 n. 23 (1983). This Court observed in Pennhurst (I) that it has never required a State to provide money to plaintiffs to remedy violations laws enacted under the spending power. 451 U.S. at 29. Because this Court has required Congress to "speak with a clear voice," when imposing conditions on the grant of federal monies, Id. at 17, this Court has never authorized a damage action under §1983 to enforce

rights under a funding statute. Accord Guardians Assn., 463 U.S. at 596 ("make whole remedies," including damages, are ordinarily not appropriate in private actions alleging violations of the terms of federal grants).

Nowhere in the foster care statute did Congress confer on children rights "sufficiently specific and definite to qualify as enforceable rights under Pennhurst and §1983." Wright v. Roanoke Redevelopment and Housing Authority, ___ U.S. ___, 107 S.Ct. 766, 775 (1987) 2/ The right the court of appeals found to be legally enforceable -- plaintiffs' statutory right to "care and protection" -- was "clear and certain" since 1961 when Congress first made federal funds for foster care available. See L.J. v. Massinga, supra, 838 F.2d at 122.

2/ The court of appeals mistakenly relied on Wright to discover a right to damages in an appropriations statute. But Wright involved equitable relief, including a request for an injunction and restitution, not money damages. See Wright, supra, at 770 n.5.

Amici submit that the Fourth Circuit is plainly wrong. Not until the courts below found a right to damages under §1983 in this case were states placed on notice that acceptance of foster care funds could strip its officials of their immunity. Heretofore, this Court had gone only so far as to establish a right to prospective injunctive relief for violations of the Social Security Act. See Rosado v. Wyman, 397 U.S. 397 (1979); Miller v. Youakim, 440 U.S. 125 (1979); King v. Smith, 392 U.S. 309 (1968).

This Court has limited legally enforceable rights to those sufficiently specific and definite to enable states to exercise their choice to accept funds knowingly. See Pennhurst (I), supra, 451 U.S. at 17. But here, the Fourth Circuit derives a right to seek damages under §1983 from a funding statute, a result no state could have reasonably foreseen when it decided to participate in a federal program.

This sweeping holding has an enormous impact on federal grants administered by amici. The Fourth Circuit's decision requires not only social workers but all officials employed by amici involved in these programs to stand trial for damages for asserted violations of a federal funding statute. Public agencies already hard-pressed to retain trained staff will be unable to protect their employees from harassing litigation and, ultimately, personal monetary liability. See Anderson v. Creighton, ___ U.S. ___, 107 S.Ct. 3034, 3038 (1987) (substantial social costs of permitting damage actions against governmental officials). Permitting a federal court to inject itself into volatile questions of child welfare -- matters more akin to state tort than federal civil rights law -- will certainly stimulate more litigation but is unlikely to improve the welfare of American families. See DeShaney v. Winnebago County Dept. of Social Services, 812 F.2d 298, 304 (7th Cir. 1987), cert. granted, No. 87-154. Not

only will amici be compelled to weigh whether future acceptance of funds justifies the risk to its employees, amici will have unwittingly exposed its employees to second guessing of thousands of decisions spanning decades of serving children. Surely, Congress could not have intended this result.

II. The Eleventh Amendment Bars Plaintiffs' Damage Claims Because The State is the Real Party in Interest.

The Eleventh Amendment bars a suit against state officials when "the state is the real, substantial party in interest." Pennhurst State School and Hospital v. Halderman (II) 465 U.S. 89, 101 (1984). Damage actions seeking to impose personal liability on state officials generally are not attacks on the public treasury and, therefore, are permissible. See Scheuer v. Rhodes, 416 U.S. 232, 237-38 (1974) However, even injunction suits may place demands on the state fisc and, thus, the difference between permissible

and impermissible relief "will not in many instances be that between day and night." Edelman v. Jordan, 415 U.S. 651, 667 (1974). "[T]he general criterion for determining when a suit is in fact against the sovereign is the effect of the relief sought." Pennhurst (II), supra, 465 U.S. at 107.

Here, the practical effect of a damage action under §1983 against twenty state caseworkers, supervisors and administrators in their individual capacities (assuming arguendo plaintiffs assert legally enforceable rights) is to implicate the public treasury. Faced with similar broad-based attacks on their foster care programs and the state employees who administer them, amici could abandon these officials only at their peril.

Amici are acutely aware of the difficulty of the tasks these social workers perform and the risk they undertake for the common good. While no state could in every case promise to indemnify an employee discharging public duties, it is equally

true that no state could categorically withhold its funds from officials who suffer the entry of damage awards against them. Amici need trained social workers to administer their programs. The interests of the state and its employees are not like "day and night." Amici are responsible for operating foster care program and, out of necessity, are responsible for those working in these programs. The State is the real party in interest in this case, and, therefore is immune from these damage actions under the Eleventh Amendment.

CONCLUSION

For the reasons stated herein and in the petition, amici respectfully urge this Court to issue a writ of certiorari to review the judgment of the Court of Appeals for the Fourth Circuit.

Respectfully submitted,

WILLIAM J. GUSTE, JR. *
Attorney General of
Louisiana
234 Loyola Avenue
New Orleans, Louisiana 70112
(504) 568-5575

DAN SIEGELMAN
Attorney General of
Alabama
State House
11 South Union Street
Montgomery, Alabama 36130
(205) 261-7300

CHARLES M. OBERLY, III
Attorney General of Delaware
State Office Building
Seventh Floor
820 North French Street
Wilmington, Delaware 19801
(302) 571-3838

JIM JONES
Attorney General of Idaho
State House
Boise, Idaho 83720
(203) 334-2400

* Counsel of Record for Amici Curiae

LACY H. THORNBERG
Attorney General of
North Carolina
Department of Justice
P.O. Box 629
Raleigh, North Carolina 27602
(919) 733-3305

T. TRAVIS MEDLOCK
Attorney General of
South Carolina
P.O. Box 11549
Columbia, South Carolina 2921
(803) 734-3970

ROGER TELLINGHUISEN
Attorney General of
South Dakota
State Capitol
Pierre, South Dakota 57501
(605) 773-3215

MARY SUE TERRY
Attorney General of Virginia
101 North Eighth Street
Richmond, Virginia 23219
(804) 786-2071

CHARLES G. BROWN
Attorney General of
West Virginia
State Capitol
P.O. Box 7857
Charleston, West Virginia 253
(304) 348-2021

DONALD J. HANAWAY
Attorney General of Wisconsin
114 East State Capitol
P.O. Box 7857
Madison, Wisconsin 53707
(608) 266-1220